LEGISLATIVE SERVICES AGENCY

OFFICE OF FISCAL AND MANAGEMENT ANALYSIS

200 W. Washington, Suite 301
Indianapolis, IN 46204
(317) 233-0696
http://www.in.gov/legislative

FISCAL IMPACT STATEMENT

LS 6436 | **NOTE PREPARED:** Mar 13, 2012
BILL NUMBER: HB 1376 | **BILL AMENDED:** Mar 10, 2012

SUBJECT: State and Local Administration.

FIRST AUTHOR: Rep. Espich | **BILL STATUS:** Enrolled
FIRST SPONSOR: Sen. Kenley

FUNDS AFFECTED: X GENERAL | **IMPACT:** State & Local
X DEDICATED
FEDERAL

Summary of Legislation: *Excess State Reserves Transfer/Automatic Taxpayer Refund:* The bill provides that for purposes of the automatic taxpayer refund statutes, the amount of the refund for qualifying taxpayers is determined on a per capita basis by dividing the total amount of excess state reserves available to provide automatic taxpayer refunds by the total number of qualifying taxpayers. It provides that a taxpayer qualifies for the refund if the taxpayer filed a resident tax return in the preceding year. Effective January 1, 2013, it makes the threshold for use of excess reserves 12.5% (rather than 10%, under current law) of general revenue appropriations for the state fiscal year. It specifies that: (1) if the amount of the excess reserves, including any carryover amounts, are less than $50,000,000, the excess reserves shall be carried over to the next year; and (2) if the excess reserves are $50,000,000 or more, 50% of the excess reserves shall be transferred to certain pension funds and 50% of the excess reserves shall be used for the purposes of providing an automatic taxpayer refund. It provides that beginning in 2013, the Office of Management and Budget shall calculate, after the end of each odd-numbered state fiscal year, the total amount of state reserves.

Family and Social Services Administration: The bill reestablishes the Office of the Secretary of Family and Social Services and other divisions and offices within FSSA. It specifies that the authority of the Secretary of Family and Social Services or the Office of Medicaid Policy and Planning to adopt an emergency rule concerning federal Medicaid waiver program provisions or federal programs administered by the Office of the Secretary expires on December 31, 2012. It provides for the expiration of rules adopted before January 1, 2013.

Little Calumet River Basin Development Commission: The bill defines "parcel" for purposes of the statute allowing the Little Calumet River Basin Development Commission (Commission) to levy a special assessment

on parcels of land within the Little Calumet River and Burns Waterway watershed in Lake County. It specifies areas in which the Commission may operate. It specifies the total amount of the loan repayment by the Commission to the Northwest Indiana RDA. It provides that none of the four members from a unit that borders the Little Calumet River may be from the same municipality.

Payments to Victims of State Fair Stage Collapse: The bill provides that the Attorney General shall attempt to resolve before January 1, 2013, all claims and suits brought against the state or its employees for a death or injury occurring as the result of an accident at the 2011 State Fair for an amount that, in the aggregate, does not exceed $11,000,000. It specifies the amount of relief that victims of the accident at the State Fair may receive. It authorizes the Attorney General to establish a process for determining the amount of compensation for persons who suffered physical injuries involving permanent paralysis or permanent physical trauma or requiring major and ongoing long-term care. It establishes the Supplemental State Fair Relief Fund for the purpose of providing additional relief to the victims of the accident. It appropriates $6,000,000 from the state General Fund to the Supplemental State Fair Relief Fund. It caps attorney's fees for representation of an eligible person regarding compensation from the Supplemental Fund at 10% of the total compensation paid to the eligible person from the Supplemental Fund. It provides that an eligible person may assign to the Attorney General the eligible person's right to pursue a cause of action for the tortious breach of an insurer's duty to deal with an insured person in good faith. It provides that if the Insurance Commissioner determines after a hearing that a person has committed an act that is listed as an unfair claim settlement practice and is related to a death or injury resulting from the accident at the 2011 State Fair, the Insurance Commissioner may order certain remedies. It specifies that the Insurance Commissioner may take such action without having to demonstrate that the act or practice occurs with such frequency as to indicate a general practice by the person. It provides that neither a hospital nor an ambulance may place a lien on a distribution made from the Supplemental State Fair Relief Fund to a victim of the State Fair accident. It prohibits an insurer from claiming subrogation or reimbursement rights with respect to a distribution made from the Supplemental State Fair Relief Fund. It requires a person who intends to challenge the constitutionality of the prohibition against asserting subrogation or other reimbursement rights to file written notice of the person's intent to challenge this prohibition not later than 40 days after a distribution is made from the Supplemental State Fair Relief Fund. It provides that distributions to the estates of persons whose death was caused by the accident at the State Fair are exempt from Inheritance Tax.

Full-Day Kindergarten: The bill permits augmentation of the appropriation for full-day kindergarten and changes the amount distributed per child.

Select Commission on Education: The bill establishes the Select Commission on Education to study: (1) the process of adoption and content of rules adopted by the Indiana State Board of Education concerning categories or designations of school improvement including the matrices used for the A-F designations; and (2) proposed rules, adopted rules, and policies of the Department of Education and the Indiana State Board of Education to implement the provisions of P.L.90-2011, concerning teacher evaluations and licensing.

School Staff Evaluations: The bill makes changes to the process in which a school corporation may modify the Department's model staff performance evaluation plan.

Turnaround Academies: The bill makes changes to the definition of a turnaround academy. It provides that if the State Board assigns a special management team to a school, the State Board shall enter into a contract with a special management team that includes: (1) a requirement that the special management team and the governing body conduct a public meeting two times each year to provide a report concerning student achievement of affected students; and the condition of the school property and to address issues related to the school property; and (2) a requirement that the student instruction must be provided by teachers licensed under IC 20-28-5. It also provides that individuals employed by the special management team are entitled to participate in either PERF or TRF and that employees are not required to collectively bargain.

Other Provisions: The bill returns IC 20-26-11-8, as amended by SEA 283-2012, to law existing before the enactment of SEA 283-2012.

Effective Date: Upon Passage; July 1, 2012; January 1, 2013.

Explanation of State Expenditures: *Excess State Reserves Transfer:* The bill is estimated to reduce the expected excess state reserves transfer for pension purposes in FY 2013 by $7.95 M to $9.3 M. This would result in an estimated transfer of $157.5 M to $158.85 M in FY 2013 for pension purposes. The funding decrease would result from the additional payments to victims of the State Fair stage collapse (described below) and the augmented FY 2013 appropriation for full-day kindergarten (described below).

The bill also requires in FY 2013 only, that the excess state reserves transfer for pension purposes be distributed first to the state police, conservation officers, judges, and prosecuting attorneys pension plans to increase the funded amount of each plan to 80%. Any residual after these payments would be transferred to the Pension Stabilization Fund.

The bill also changes the excess state reserves transfer requirements (described below), but these changes will not affect excess reserve transfers in FY 2013. The impact of these changes on excess state reserves transfers in subsequent years is indeterminable.

Full-Day Kindergarten: The bill provides a full-day kindergarten grant of $2,400 for each kindergarten student enrolled in a full-day program for the 2012-13 school year. It allows augmentation of the current appropriation ($89.1 M) to fully fund the grant.

For the 2011-12 school year, there are 67,752 students attending a full-day kindergarten program, and 66,401 of those students are funded by the state full-day kindergarten grant. The total number of kindergarten students in the 2011-12 school year is 78,154. The augmentation required could range between about $78.3 M ($2,400*66,752 - $81.9 M) and $105.7 M ($2,400*78,154 - $81.9 M).

Payments to Victims of State Fair Stage Collapse: Under current law, the maximum amount that the state General Fund will pay to persons who are killed or injured in a single occurrence is $5 M. This provision would permit the Office of the Attorney General to attempt to resolve all claims and suits brought against the state due to the stage collapse at the Indiana State Fair on August 26, 2011, by creating a Supplemental State Fair Award Fund of $6 M.

Amount Available (in $M) for Victim Compensation				
Initial Tort Payments		Supplemental Fund		Total Available
$5.0	+	$6.0	=	$11.0

This bill would also increase the amount that each of the victims who were killed and were permanently injured to $700,000 and increase the compensation to victims who were injured but not permanently disabled to an amount that was lesser than the amount of the person's eligible losses, or the amount that was claimed by each victim.

Any remaining money in this supplemental fund after paying claims does not revert to the General Fund until July 1, 2052. LSA estimates that the available monies that would remain after the initial tort payments and amount proposed in the bill would be $1.66 M. The remaining funds would be available to pay for ongoing personal care expenses for individuals who suffered permanent paralysis or permanent physical trauma or requiring major and ongoing long-term care.

Funds Available (in $M) After Current and Added Payments				
Total Available		Current and Added Payments		Available for Future Payments
$11.00	-	$9.34	=	$1.66

The Office of the Attorney General reports that there were seven claims filed for the estates of persons killed and 57 claims filed by persons who were physically injured. This provision divides payments into three basic categories for determining the compensation to each victim. The payments shown in the following table were estimated by the Office of the Attorney General based on whether the person was killed or injured and, if injured, the extent of each person's injury.

Type	**Number of Victims**	**Initial State Payments**	**Proposed Added Payments**	**Total Payments**
Death	7	$2,184,349	$2,715,651	$4,900,000
Permanent Disability	3	$1,316,971	$783,029	$2,100,000
Physical Injury	54	$1,498,680	$845,585	$2,344,265
Grand Total	64	$5,000,000	$4,344,265	$9,344,265

Reauthorization of FSSA: The bill will reauthorize the administrative structure of the FSSA as it currently exists. (Upon its statutory expiration on June 30, 2011, authority for the FSSA was extended by the Governor's executive order.) The bill legalizes and validates actions by the FSSA taken after the expiration of authority on June 30, 2011. The bill does not include an expiration date. The FSSA administrative offices affected are:

(1) The Office of the Secretary of Family and Social Services.
(2) The Office of Medicaid Policy and Planning.

The bill also reestablishes operating procedures of the division advisory councils and provisions that relate to certain powers of the directors of the following divisions:
(1) Disability and Rehabilitative Services.
(2) Family Resources.
(3) Mental Health and Addiction.
(4) Aging.

FSSA Emergency Rules: The bill provides that certain emergency rules previously adopted expire June 30, 2013. This provision has no fiscal impact since the rules contain the same expiration date. The bill also eliminates the emergency rule-making authority effective December 31, 2012, and provides that any emergency rules adopted after December 31, 2012, must go through the general rule-making process. The bill further provides that any emergency rule adopted before December 31, 2012, expires no later than June 30, 2013.

Select Commission on Education: The bill establishes a Select Commission on Education consisting of the members of the Senate Education and Career Development Committee and the House Education Committee. The committee is to operate under the policies governing study committees adopted by the Legislative Council. Legislative Council resolutions in the past have established budgets for interim study committees in the amount of $16,500 per interim for committees with 16 members or more.

The chairpersons of the Senate Education and Career Development Committee and the House Education Committee will be co-chairpersons of the commission. The commission is to study (1) the process of adoption and content of rules adopted by the State Board of Education concerning the categories or designations of school improvement, including the matrices used for the A-F designations; (2) rules and policies of the Department of Education to implement the provisions concerning teacher evaluation and licensing; and (3) any other issue that the Legislative Council or commission considers necessary.

Charter School 3rd Grade Reading Remediation: The requirement that the State Board of Education's plan for ensuring that charter school students are reading at grade level by the end of Grade 3 to include only an assessment of each student's reading level in Grade 3 and the retention of a student as a last resort should have no fiscal impact.

<u>*Background Information on Excess State Reserves Transfers:*</u> The bill makes the following changes to current statute relating to excess state reserves transfers.

(1) In FY 2013 <u>only</u>, it provides that 50% of the excess state reserves be transferred first to the state police, conservation officers, judges, and prosecuting attorneys pension plans to increase the funded amount of each plan to 80% and then transferring any residual amounts to the Pension Stabilization Fund. Under current statute, the transfer is to be made only to the Pension Stabilization Fund.

(2) It changes the requirements for transfers to be made from excess reserves to the automatic taxpayer refund and the Pension Stabilization Fund. Under current statute, reserves ending the prior fiscal year that exceed 10% of the current fiscal year general revenue appropriations are to be transferred to the automatic taxpayer refund and the Pension Stabilization Fund. Beginning in FY 2012, the bill provides that such transfers may not occur unless the excess reserve total is at least $50 M. Beginning in FY 2013, the bill increases the excess reserve threshold from 10% to 12.5%.

(3) It changes the schedule under which such transfers could be made beginning in FY 2013. The bill would permit the excess state reserves transfers to be made only in the first fiscal year of a biennium based on the total state reserves at the end of the second fiscal year of the preceding biennium.

It is estimated that under current statute and prior to additional expenditures authorized in 2012, the excess state reserves transfer could total $333.6 M in FY 2013 according to the Combined Statement of Estimated

Unappropriated Reserve (December 14, 2011). This would have resulted in transfers to the automatic taxpayer refund and the Pension Stabilization Fund of up to $166.8 M each in FY 2013.

The bill also provides for an additional $6 M in payments to State Fair stage collapse victims and augments appropriations for full-day kindergarten in FY 2013 with an estimated cost of $78.3 M to $105.7 M. It is assumed that the additional payments to the State Fair stage collapse victims will be dispersed in FY 2012. Based on these expenditure changes, it is estimated that the excess state reserves transfer in FY 2013 could range from $315.0 M to $317.7 M, with the transfer for pension purposes and the transfer for the automatic taxpayer refund totaling $157.5 M to $158.85 M each.

Under current statute, the FY 2013 state reserve is estimated to total $1,765.3 M. With the changes in the bill, the FY 2013 reserve is estimated to total $1,672.2 M to $1,696.9 M. It is indeterminable whether the FY 2013 excess reserves will be sufficient to permit an excess state reserves transfer in FY 2014.

Explanation of State Revenues: *Automatic Taxpayer Refund:* The bill would change the distribution of the automatic taxpayer refund credit among taxpayers effective beginning in FY 2013. Under current statute, the tax credit is nonrefundable and the credit amount for each taxpayer would be calculated based on the percentage share of the total income tax paid by all taxpayers paid by that taxpayer. The bill makes the tax credit refundable and provides for the tax credit to be distributed in an equal amount per taxpayer.

It is estimated that the bill would provide for a total of $157.5 M to $158.85 M in refundable individual adjusted gross income (AGI) tax credits. This would be a decrease in revenue loss from the credit in comparison to current statute by an estimated $7.95 M to $9.3 M. The revenue loss is expected in FY 2013. The impact of increasing the excess state reserves threshold beginning in FY 2014 on future tax credit amounts is indeterminable.

Payments to Victims of State Fair Stage Collapse: The bill exempts from Inheritance Tax payments made from the State Tort Claims Fund or the Supplemental State Fair Relief Fund to the estate of a person whose death was caused by the State Fair stage collapse. A total of $4.9 M in payments to estates would have been subject to Inheritance Tax under prior law.

Background Information on Automatic Taxpayer Refund: P.L. 229-2011 established an automatic taxpayer refund through an individual AGI tax credit. The tax credit was nonrefundable and had to be taken against the taxpayer's tax liability in the tax year the credit is provided. In addition, the tax credit was based on each taxpayer's relative share of the total overall tax liability for all eligible taxpayers. To be eligible for the tax credit, a taxpayer had to file a resident income tax return for the two taxable years preceding the tax year in which the tax credit is made available and paid individual income tax for the preceding taxable year.

The bill makes the tax credit refundable and provides for the tax credit to be distributed in an equal amount per taxpayer. The bill also changes eligibility for the credit. To be eligible, a taxpayer must have filed a resident income tax return for the tax year immediately preceding the tax year in which the tax credit is made available instead of the preceding two tax years. Also, the bill changes the tax credit from a tax liability credit to a refundable credit, but requires that a taxpayer have a tax liability to be eligible for the credit.

Explanation of Local Expenditures: *Little Calumet River Basin Development Commission (LCRBDC)*: Under current law and HEA 1264-2012, the LCRBDC may operate only within 1 mile of the bank of the Little

Calumet River in Lake and Porter Counties. In order to address flooding within this area, this bill would also permit the LCRBDC to operate in areas that include tributaries to the Little Calumet River and Burns Waterway.

HEA 1264-2012 provides for the transfer of specified amounts to the Northwest Indiana Regional Redevelopment Authority (NIRDA) under a schedule that extends to July 1, 2017. The total amount transferred under the schedule is $6 M. Transfer amounts may be postponed or reduced if two-thirds of the LCRBDC members vote to adopt a resolution declaring an emergency exists. This bill states that the total of all transfers, even if postponed or reduced, is $6 M.

Turnaround Academies: The bill clarifies that turnaround academies are considered local educational agencies only for purposes of receiving federal funds. The bill also clarifies that the turnaround academies are not required to collectively bargain and that their employees are entitled to participate in the state Teachers' Retirement Fund or the state Public Employees' Retirement Fund. The clarifications could have minor fiscal impact.

The bill also requires a turnaround academy to hold two public meetings each year and to provide a report concerning student achievement and the condition of the school property. The bill also requires instruction to be provided by licensed teachers. The impact of the provisions is minor and would be funded from the academy's revenue stream.

School Staff Evaluations: If a school corporation substantially modifies DOE's teacher performance model evaluation plan, they must have the plan approved by 75% of the teachers. Any impact is probably minor.

Charter School 3rd Grade Reading Remediation: The requirement that the State Board of Education's plan for ensuring that charter school students are reading at grade level by the end of Grade 3 to include only an assessment of each student's reading level in Grade 3 and retention of a student as a last resort should give charter schools greater flexibility in remediating 3rd grade students. This bill could reduce charter school remediation expenditures.

Currently, Department of Education administrative rules require 3rd grade remediation to include, but is not limited to, the following types of remediation:

(1) Scientifically-based reading strategies that meet the student's needs.
(2) Instruction by an effective teacher as measured by student performance results.
(3) At least 90 minutes of reading instruction each day.
(4) At least one of the following instructional options: tutoring before or after school; parent workshops and a parent-guided home reading program; a mentor or tutor with specialized reading training and may include volunteers or school staff; extended-day programs; or supplemental instruction services.

Non-Public School Student Transportation: The impact of clarifying that public schools who transport non-public school students to the nearest or most accessible point to the nonpublic school from which the student can safety walk should have minor impact.

Explanation of Local Revenues: *Full-Day Kindergarten:* School corporations or charter schools that apply for the full-day kindergarten grants are prohibited from charging fees for enrolling in or attending full-day kindergarten in the 2012-2013 school year.

State Agencies Affected: OMB; DOR; FSSA; state police, conservation officers, judges, and prosecuting attorneys pension plans.

Local Agencies Affected: Little Calumet River Basin Development Commission; Northwest Indiana Regional Redevelopment Authority; school corporations; charter schools;

Information Sources: General Fund Combined Statement of Estimated Unappropriated Reserve, FY 2012-FY 2013, State Budget Agency, December 14, 2011. OFMA Income Tax Databases, 2009.

Fiscal Analyst: Jim Landers, 317-232-9869; Chuck Mayfield, 317-232-4825; Mark Goodpaster, 317-232-9852; Kathy Norris, 317-234-1360; Bob Sigalow, 317-232-9859.